REMARKS/ARGUMENTS

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

Claims 37-43, 45-54, 56-65, 67-69, and 97 are pending in the present application, Claims 37, 40-42, 48, 51-53, 59, 62-64, and 97 having been amended. Support for the amendments to Claims 37, 40-42, 48, 51-53, 59, 62-64, and 97 is found, for example, in paragraphs [0159] and [0176] of the published version of the application (2002/0046097). Applicants respectfully submit that no new matter is added.

In the outstanding Office Action, Claims 37-43, 45-54, 56-65, 67-69, and 97 were rejected under 35 U.S.C. §112, first paragraph; Claims 37-43, 45-54, 56-65, 67-69, and 97 were rejected under 35 U.S.C. §103(a) as unpatentable over Logan et al. (U.S. Patent No. 5,721,827, hereinafter Logan) in view of Hammons et al. (U.S. Patent No. 6,477,509, hereinafter Hammons).

With respect to the rejection under 35 U.S.C. §112, first paragraph, the claims and specification are amended as suggested in the outstanding Office Action. The claims are amended to replace "refund quantity" with "share of profits," as suggested by the outstanding Office Action. Furthermore, the specification is amended to equate "share of profits" with "profit give back" and "profit redistribution." Furthermore, the tile is amended to remove the word "refund." Accordingly, this ground for rejection is believed to have been overcome. If, however, the Examiner disagrees, the Examiner is invited to telephone the undersigned who will be happy to work with the Examiner in a joint effort to derive mutually satisfactory claim language.

With respect to the rejection of Claim 37 as obvious over the combination of Logan and Hammons, Applicants respectfully submit that the amendment to Claim 37 overcomes this ground of rejection. Amended Claim 37 recites, *inter alia*, "accessing means for

accessing content data provided by a content creator, the content data including advertising data affixed thereto, said advertising data being affixed based on commercial desired data generated in response to a selection by the content creator." Logan and Hammons, take alone or in proper combination, do not disclose or suggest this element of amended Claim 37.

The outstanding Office Action relies on Logan to disclose advertising data.[1] However, Logan does not disclose or suggest said advertising data being affixed based on commercial desired data generated in response to a selection by the content creator. Logan is silent as to commercial desired data generated in response to a selection by the content creator. Logan merely mentions that a server, based on information from a subscriber, compiles one or more files for downloading which include programming and advertising segments.[2] There is no disclosure or suggestion that advertising data is affixed to content based on commercial desired data generated in response to a selection by the content creator.

Hammons does not cure the deficiency in Logan.

Furthermore, applicants respectfully submit that such a feature is not inherent in Logan and Hammons. Applicants note that to establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.[3]

In view of the above-noted distinctions, Applicants respectfully submit that Claim 37 (and any claims dependent thereon) patentably distinguishes over Logan and Hammons, taken alone or in proper combination. Claims 48, 59, and 97 recite elements similar to those of Claim 37. Thus, Applicants respectfully submit that Claims 48, 59, and 97 (and any

[1] Office Action, page 3, citing Logan, col. 20, lines 3-20.
[2] Logan, col. 6, lines 56-60.
[3] *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).

claims dependent thereon) patentably distinguish over Logan and Hammons, taken alone or in proper combination, for at least the reasons stated for Claim 37.

Consequently, in light of the above discussion and in view of the present amendment, the present application is believed to be in condition for allowance and an early and favorable action to that effect is respectfully requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
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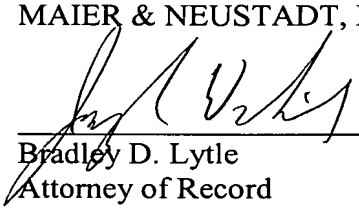

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